

**CITY OF TIGARD, OREGON**  
**TIGARD CITY COUNCIL**  
**RESOLUTION NO. 13- 51**

A RESOLUTION APPROVING THE THIRD AMENDMENT TO THE WATER PARTNERSHIP INTERGOVERNMENTAL AGREEMENT, INCLUDING THE PURCHASE OF THE MAPLETON PROPERTIES, THE SHIFTING OF FOUR MILLION GALLONS A DAY OF CAPACITY TO TIGARD AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT

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WHEREAS, in August 2008 the cities of Tigard and Lake Oswego entered into a water partnership formalized in the Intergovernmental Agreement Regarding Water Supply Facilities, Design, Construction, and Operation (Agreement); and

WHEREAS, this third amendment will update Exhibits 6 and 7 of the Agreement; and

WHEREAS, Lake Oswego has offered and Tigard desires to transfer an additional four million gallons per day of program-wide capacity to Tigard for an agreed to price; and

WHEREAS, with the approval of land use permits, it is now realized that the Mapleton properties are necessary for the completion of the program and thus Tigard is now obligated by the Agreement to purchase a proportional share of those properties from Lake Oswego; and

WHEREAS, the Lake Oswego and Tigard City Councils are required to approve this amendment; and

WHEREAS, an error in the original Exhibit 6, *Determination of Tigard Buy-In*, needs to be corrected; and

WHEREAS, the revised Exhibit 6 corrects a previous math error and now includes Tigard's buy-in of the Mapleton properties; and

WHEREAS, the revised Exhibit 7, *Allocation of System Improvement Costs to the Parties*, has been updated and sets Tigard's system improvement costs at \$154 million, which includes inflationary costs through 2016.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council hereby approves Attachment A, the Third Amendment to the Intergovernmental Agreement Regarding Water Supply Facilities, Design, Construction, and Operation and authorizes the mayor to execute the amendment.

SECTION 2: The Tigard City Council hereby approves the revised Exhibit 6, the *Determination of Tigard Buy-In*, as included in this third amendment to the Agreement.

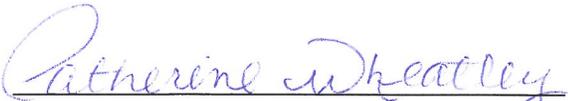
SECTION 3: The Tigard City Council hereby approves the revised Exhibit 7, *Allocation of System Improvement Costs to the Parties*, as included in this third amendment to the Agreement.

SECTION 4: This resolution is effective immediately upon passage.

PASSED: This 10<sup>th</sup> day of December 2013.

  
\_\_\_\_\_  
Mayor - City of Tigard

ATTEST:

  
\_\_\_\_\_  
City Recorder - City of Tigard

**THIRD AMENDMENT TO INTERGOVERNMENTAL AGREEMENT  
REGARDING WATER SUPPLY FACILITIES, DESIGN, CONSTRUCTION, AND  
OPERATION**

THIS THIRD AMENDMENT to Intergovernmental Agreement Regarding Water Supply Facilities, Design, Construction and Operation (Third Amendment) is effective this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by and between the City of Lake Oswego (Lake Oswego) an Oregon municipal corporation, and the City of Tigard (Tigard), an Oregon municipal corporation. Lake Oswego and Tigard may also be referred to individually herein as a "Party" and collectively as "Parties."

**Recitals**

WHEREAS, on August 6, 2008 the Parties executed an Intergovernmental Agreement Regarding Water Supply Facilities, Design, Construction and Operation (Agreement); and

WHEREAS, since the execution of the original Agreement, the scope of the Project under the Agreement has changed from beginning with an "Initial Expansion" of Supply Facilities to provide Capacity of 32 million gallons of water per day (mgd), to instead encompass the full contemplated "Long Term Expansion," with a Capacity of 38 mgd; and

WHEREAS, the Parties have concluded that it is in the best interest of both to adjust the allocation of Capacity from the expanded water supply facilities to transfer 4 mgd of Capacity from Lake Oswego to Tigard, resulting in 20 mgd being allocated to Lake Oswego and 18 mgd being allocated to Tigard; and

WHEREAS, the shift in allocation, plus the addition of Mapleton Drive properties as assets under the Agreement and correction of original "buy-in" calculations, necessitates a payment from the City of Tigard to the City of Lake Oswego based on new costs share applied to costs paid by Lake Oswego on the 4mgd to date and the additional "buy-in" amount for the Mapleton Drive properties; and

WHEREAS, Exhibit 6 to the Agreement outlining Tigard's buy-in costs, and Exhibit 7 to the Agreement setting forth an allocation of system improvement costs to the parties, require adjustments reflecting the changes described in these recitals; and

WHEREAS, the Parties desire to expedite the timeframe for reviewing the Agreement to consider whether changes are necessary or desirable to reflect the transition from an agreement regarding construction to an agreement regarding long term operations;

NOW, THEREFORE, THE PARTIES AGREE TO THIS THIRD AMENDMENT AS FOLLOWS:

Section 1. Updating References and Eliminating Inconsistencies. The Agreement is amended to refer to a single Expansion having 38 mgd Capacity, in place of all references to an Initial Expansion or a Long Term Expansion.

Section 2. Allocation of Capacity. The Agreement is amended to adjust any statements of allocations of Capacity to state an allocation of 20 mgd to Lake Oswego and 18 mgd to Tigard. Specifically, and without limiting the foregoing, Section 4.3 of the Agreement is amended to read as follows:

4.3 Allocation of Capacity

At the completion of the Expansion, Tigard's allocation of Capacity shall be 18 million gallons of water per day, and Lake Oswego's allocation shall be 20 million gallons per day.

Section 3. Payment. Within 60 days following the execution of this Third Amendment, Tigard shall pay Lake Oswego the sum of Five Million One Hundred Thirty One Thousand Three Hundred Ninety Dollars (\$5,131,390), consisting of \$1,272,846 as an additional "buy-in" amount that results from adding the Mapleton Properties to the Agreement assets and correcting original buy-in calculations, plus \$3,858,544 to reimburse Lake Oswego for costs paid to date by reason of the 4 mgd of Capacity that is transferred to Tigard pursuant to Section 2 of this Third Amendment.

Section 4. Sales to Others. Article XI of the Agreement is amended to read as follows:

Article XI Sales to Others

In addition to the Existing Wholesale Customers, Retail Customers of any Party, existing mutual aid agreements, or extension of service to service areas identified in the Carollo Report, either Party may contract for the sale or use of water within that Party's allocation of Capacity to any other person, provided that the contract is on a surplus basis. Any additional sale of water contracts that are not on a surplus basis, or any other contracts for sale or use of the Supply Facilities, shall require the approval of the other Party and compliance with the terms of this Agreement. Any revenues derived from the sale of water to another entity shall be paid to the Managing Agency. Net proceeds from such sales shall be credited back to the Parties based on a method as mutually agreed. Net proceeds shall be those proceeds remaining after expenses, renewals and replacements and contingencies are paid.

Section 5. Modifications to Governance and Management Structure. Section 15.1 of the Agreement is amended to read as follows:

15.1 Modification to Agreement

Within one year after approval of this amendment, the Oversight Committee shall undertake a review of all agreements to date to consider any modifications to the terms and conditions of this Agreement that may be necessary or desirable, including any modifications needed to transition from an agreement regarding construction to an agreement regarding long term operations. Matters that may be considered include, but are not limited to, changes in ownership, water rights limitations, conditions of approval and legal settlements, governance and management structure. At the recommendation of the Oversight Committee, the Councils for the parties may consider:

15.1.1 Modification of the existing Agreement(s);

15.1.2 Replacement of existing Agreement(s) with a new Agreement:

15.1.3 Creation of a Supply Agency under ORS Chapter 190.

Section 6. Revision of Exhibits. Exhibit 6 (Determination of Tigard Buy-In) and Exhibit 7 (Allocation of System Improvement Costs to the Parties) are revised to read as set forth in attached Exhibits 6 and 7.

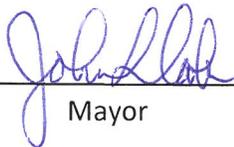
Section 7. Entire Agreement. Except a specifically amended by this Third Amendment, the Agreement dated August 6, 2008 as subsequently amended by the first Amendment and the Second Amendment remains in full force and effect.

IN WITNESS WHEREOF the Parties have dated and signed this Agreement

**City of Lake Oswego**

**City of Tigard**

\_\_\_\_\_  
Mayor Dated

  
\_\_\_\_\_  
Mayor Dated 12/10/2013

ATTEST:

ATTEST:

\_\_\_\_\_  
City Recorder Dated

  
\_\_\_\_\_  
City Recorder Dated 12/10/2013

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney Dated

  
\_\_\_\_\_  
City Attorney Dated 12/10/2013

**EXHIBIT 6  
AMENDED AND CORRECTED TIGARD BUY-IN**

| Asset                                 | Tax Map    | Tax Lot | Clackamas Co. Deed | Original Cost | Net Reproduction Cost | Tigard Allocation % | Tigard Share        |
|---------------------------------------|------------|---------|--------------------|---------------|-----------------------|---------------------|---------------------|
| Clackamas River Intake & Pump Station |            |         |                    | \$ 1,911,733  | \$ 1,832,454          | 0.00%               | \$ -                |
| Clackamas River Intake Land*          | 2 2E 20CA  | 15001   | Bk 173, Pg 900-902 | \$ 10,450     | \$ 260,000            | 14/38               | \$ 95,789           |
| Computer System/Software              |            |         |                    | \$ 214,222    | \$ 72,311             | 14/38               | \$ 26,641           |
| Finished Water Transmission           |            |         |                    | \$ 2,111,711  | \$ 5,440,227          | 0.00%               | \$ -                |
| General Plant                         |            |         |                    | \$ 61,500     | \$ 15,561             | 14/38               | \$ 5,733            |
| Raw Water Transmission                |            |         |                    | \$ 612,137    | \$ 2,460,521          | 14/38               | \$ 906,508          |
| Waluga Reservoir                      |            |         |                    | \$ 1,281,427  | \$ 1,960,196          | 0.00%               | \$ -                |
|                                       |            |         |                    |               |                       | <b>Subtotal</b>     | <b>\$ 1,034,671</b> |
| <b>Waluga Reservoir: Land</b>         |            |         |                    |               |                       |                     |                     |
| Reservoir Property                    | 2 1E 07 AD | 03100   | Doc 72-06414       | n/a           | \$354,508             | 14/38               | \$ 130,608          |
| Waluga Res #1*                        | 2 1E 07AD  | 00700   | Doc 76-36977       | n/a           | \$1,407,287           | 14/38               | \$ 518,474          |
| 4800 Carmen Dr.*                      | 2 1E 07AD  | 00900   | Doc 92-063461      | \$ 323,300    | \$945,353             | 14/38               | \$ 348,288          |
| Vacant Parcel*                        | 2 1E 07AD  | 01000   | Doc 92-063461      | \$ 323,300    | \$945,353             | 14/38               | \$ 348,288          |
| <b>Water Treatment Plant</b>          |            |         |                    | \$ 9,731,005  | \$ 11,704,894         | 0.00%               | \$ -                |
| <b>Water Treatment Plant Land</b>     |            |         |                    |               |                       |                     |                     |
| 4260 Kenthorpe Way - parcel 1 *       | 2 1E 24BD  | 00300   | Bk 688, Pg 581     | n/a           | \$2,425,478           | 14/38               | \$ 893,597          |
| 4260 Kenthorpe Way - parcel 2 *       | 2 1E 24BD  | 00401   | Doc 79-35248       | n/a           | \$271,975             | 14/38               | \$ 100,201          |
|                                       |            |         |                    |               |                       | <b>Subtotal</b>     | <b>\$2,339,456</b>  |
| 4245 Mapleton Dr.* (RMV)              | 2 1E 24BD  | 01200   | Doc 89-10200       | \$ 85,000     | \$ 509,554            | 18/38               | \$241,368           |
| 4305 Mapleton Dr.* (RMV)              | 2 1E 24BD  | 01300   | Doc 95-33429       | \$ 190,000    | \$ 504,459            | 18/38               | \$238,954           |
| 4315 Mapleton Dr.* (RMV)              | 2 1E 24BD  | 01400   | Doc 89-13210       | \$ 116,000    | \$ 504,459            | 18/38               | \$238,954           |
| xxxx Mapleton Dr.* (RMV)              | 2 1E 24BD  | 01500   | Doc 89-13210       | \$ -          | \$ -                  | 18/38               | \$ -                |
| <b>Totals</b>                         |            |         |                    | \$ 16,971,785 | \$ 31,614,589         | <b>Subtotal</b>     | <b>\$719,276</b>    |
|                                       |            |         |                    |               |                       | <b>Total</b>        | <b>\$ 4,093,404</b> |

\*Net reproduction cost for these properties are based on an appraisal conducted by Integra Realty Resources (July 2008).

|                            | Corrected Tigard Buy-in |
|----------------------------|-------------------------|
| Mapleton Property Total =  | \$719,276               |
| Other WTP property total = | \$2,339,456             |
| All non-property totals =  | \$1,034,671             |
| Total Tigard Allocation =  | \$4,093,404             |
| Prior Paid by Tigard =     | (\$2,820,558)           |
| <b>Balance Due =</b>       | <b>\$1,272,846</b>      |

EXHIBIT 7  
ALLOCATION OF SYSTEM IMPROVEMENT COSTS TO THE PARTIES

| Project Costs*  | Cost of Improvements | Lake Oswego    |               | Tigard         |                |
|---|----------------------|----------------|---------------|----------------|----------------|
|   |                      | Allocation (%) | Share (\$)    | Allocation (%) | Share (\$)     |
| <b>Water Treatment Plant</b>  |                      |                |               |                |                |
| - 38 mgd Expansion  | \$ 74,966,399        | 37.16%         | \$ 27,857,514 | 62.84%         | \$ 47,108,885  |
| <b>River Intake Pumping Station</b>   |                      |                |               |                |                |
| <b>Raw Water Pipeline</b>   | \$ 12,932,668        | 20/38          | \$ 6,806,667  | 18/38          | \$ 6,126,001   |
| <b>Finished Water Pipeline</b>  | \$ 24,540,330        | 20/38          | \$ 12,915,963 | 18/38          | \$ 11,624,367  |
| - WTP to South Side of Oswego Lake  | \$ 52,856,778        |                |               |                |                |
| - South Side of Oswego Lake to North Side of Oswego Lake                        | \$ 25,583,609        | 20/38          | \$ 13,465,057 | 18/38          | \$ 12,118,552  |
| - North Side of Oswego Lake to Waluga Reservoir                                 | \$ 9,732,139         | 12/30          | \$ 3,892,856  | 18/30          | \$ 5,839,283   |
| - Waluga Reservoir to Bonita Pumping Station                                    | \$ 13,466,442        | 0%             | \$ 500,000**  | 100%           | \$ 12,966,442  |
| <b>Waluga Reservoir</b>   | \$ 4,074,588         | 0%             | \$ -          | 100%           | \$ 4,074,588   |
| <b>Bonita Pumping Station</b>   | \$ 8,329,497         | 1.7/3.5        | \$ 4,045,756  | 1.8/3.5        | \$ 4,283,741   |
| <b>Sub-Totals</b>   | \$ 8,273,901         | 0%             | \$ -          | 100%           | \$ 8,273,901   |
| <b>Program Costs</b>  | \$ 181,900,000       | 38.20%         | \$ 69,483,813 | 61.80%         | \$ 112,415,760 |
| <b>Program Management, Permitting, Construction Management</b>                  | \$ 34,696,785        | 38.20%         | \$ 13,254,172 | 61.80%         | \$ 21,442,613  |
| <b>Sponsor/Staff Cost (wages, transfers, materials &amp; services, testing)</b> | \$ 13,257,000        | 38.20%         | \$ 5,064,174  | 61.80%         | \$ 8,192,826   |
| <b>SCADA System Services</b>  | \$ 1,861,684         | 38.20%         | \$ 711,163    | 61.80%         | \$ 1,150,521   |
| <b>Legal, Land Use/ROW and Other Professional Services</b>                      | \$ 9,644,000         | 38.20%         | \$ 3,684,008  | 61.80%         | \$ 5,959,992   |
| <b>Construction Contingency</b>   | \$ 8,437,000         | 38.20%         | \$ 3,222,934  | 61.80%         | \$ 5,214,066   |
| <b>Sub-Totals</b>   | \$ 67,896,000        | 38.20%         | \$ 25,936,000 | 61.80%         | \$ 41,960,000  |
| <b>Total Costs</b>  | \$ 249,796,000       | 38.20%         | \$ 95,419,800 | 61.80%         | \$ 154,375,800 |

\* - Project costs include design, construction, and mitigation contingency and are presented in 2014 dollars (assumed mid-point of construction).  
 \*\* - Lake Oswego's half of cost to upsize this reach of FWP to 36-inch so that existing 18-inch can be retired; otherwise, LO pays 0% of new pipe in this reach.